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KYSC1976-SC-0178-03

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REPLY BRIEF

SUPREME COURT OF KENTUCKY

76-178

J. C. GREENWELL and
DOROTHY GREENWELL, His Wife - Appellants

versus

COMMONWEALTH OF KENTUCKY,
DEPARTMENT OF HIGHWAYS - Appellee

APPEAL FROM THE NELSON CIRCUIT COURT
HON. CHARLES R. RICHARDSON, JUDGE

REPLY BRIEF FOR APPELLANTS

FILED

JUL 6 1976

JOHN DOUGLAS HUBBARD
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SUPREME COURT

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Copies of this Reply Brief for Appellants have been served upon Appellee's Attorneys, Dandridge F. Walton, Assistant Attorney General, Department of Transportation, Frankfort, Kentucky 40601, and James R. Goff, P. O. Box 309, Elizabethtown, Kentucky 42701, and the Trial Judge, the Hon. Charles R. Richardson, Courthouse, Munfordville, Kentucky, by mail, as required by RAP 1.250, this 17 day of June, 1976.

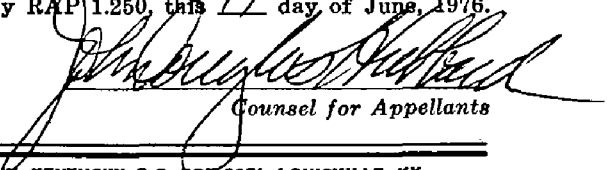

Counsel for Appellants

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SUPREME COURT OF KENTUCKY

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REPLY BRIEF FOR APPELLANTS

May it please the Court:

STATEMENT OF THE QUESTIONS PRESENTED

1. Did the trial court err in refusing to grant a new trial on the question of a "quotient verdict" when that issue was not supported by any evidence?
2. Were the damages inadequate?

ARGUMENT

- I. The Trial Court Erred in Overruling Appellants' Motion for a New Trial on the Grounds That the Verdict Was a Quotient Verdict.

The Appellee apparently does not deny that the jury's verdict was a "quotient verdict", but instead claims that the trial court should not have considered that point since the affidavits in support of the motion

were filed later than the motion. The intent of CR 6.04 and CR 59.03 is to give the party responding to a motion ample time to file whatever affidavits they may wish in response to the affidavits of the moving party.

In this case, the motion for a new trial was filed on April 9, 1974 (T.R. 30), the affidavits were filed on May 28, 1974 (T.R. 42-48), and the ruling was made thereon on October 17, 1975. Certainly, the responding party had every opportunity to file responsive affidavits, which they failed to do.

Thus, the Appellant submits that it was within the discretion of the trial court to allow the filing of the affidavits prior to the entry of its order denying the motion for a new trial.

II. The Damages Were Inadequate.

The Appellee contends that the Court should not adopt the novel approach suggested by the Appellant on the question of the inadequacy of the damages. Again, the Appellant readily concedes that it is asking the Court to adopt a new approach. However, it should be remembered that while the amount paid other adjoining landowners may not be considered from an evidentiary standpoint in fixing value at trial, those amounts might be considered by the appellate court in its determination of whether the jury was acting under the influence of passion and prejudice to the extent that the damages awarded herein were inadequate.

CONCLUSION

It is therefore submitted since the Commonwealth has not denied that it was a quotient verdict, that the judgment of the trial court should be reversed and a new trial ordered for the Appellants.

Respectfully submitted,

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